

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:06-CR-719  
5 Plaintiff, -  
6 v. - Toledo, Ohio  
7 - June 12, 2008  
8 - Trial  
9 -  
10 MOHAMMAD ZAKI AMAWI, et al., -  
11 Defendants. -  
12 -----

13 VOLUME 65, TRANSCRIPT OF TRIAL  
14 BEFORE THE HONORABLE JAMES G. CARR  
15 UNITED STATES DISTRICT CHIEF JUDGE, AND A JURY

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Proceedings recorded by mechanical stenography,  
transcript produced by notereading.

1 (Reconvened at 8:17 a.m. on June 12, 2008.)

08:17:12 2 (Jury enters the courtroom.)

08:17:14 3 THE COURT: Good morning. You may be

08:17:16 4 seated. I'm not going to ask you to comment on when

08:17:22 5 you told us to be here at 8:00 that that's when you'd be

08:17:26 6 starting your breakfast.

08:17:30 7 THE JUROR: Payback is hell.

08:17:38 8 THE COURT: I think we're technologically

08:17:42 9 set to go.

08:17:44 10 MR. SOFER: Yes, Judge. We'll be going back

08:17:48 11 and forth between two computers.

08:18:04 12 THE COURT: Once again, ladies and

08:18:06 13 gentlemen, if you want to stop or interrupt, just let us

08:18:10 14 know.

08:18:32 15 (Audio is played.)

08:23:30 16 (Video is played.)

08:23:50 17 THE JUROR: No voice.

08:23:54 18 THE COURT: There's audio?

08:23:58 19 MR. HARTMAN: No.

08:24:44 20 THE JUROR: Does it have to be turned up on

08:24:46 21 the film?

08:25:22 22 MR. HARTMAN: There it is. Just turn it

08:25:26 23 up.

08:25:26 24 THE JUROR: It's faint.

08:25:56 25 THE JUROR: Is there a master volume on

08:25:58 1 there?

08:26:44 2 MR. SOFER: We're going to try switching the  
08:26:48 3 input.

08:26:48 4 THE JUROR: A lot of static.

08:30:42 5 (Video is played.)

08:37:58 6 THE JUROR: Your Honor, I think we've seen  
09:12:04 7 what we need to see.

09:12:08 8 THE COURT: You may resume deliberating. I  
09:12:10 9 remind you, only talk about the case when all 12 of you  
09:12:14 10 are together, and only in the jury room, and let us know  
09:12:16 11 when you take a recess or break.

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09:12:16 1 (Telephone conference commenced at 12:33  
12:33:00 2 p.m. on June 12, 2008.)

12:33:00 3 THE COURT: Is everybody on the line?

12:33:02 4 MR. HERDMAN: The government is here.

12:33:04 5 MS. CLEARY: Amy Cleary.

12:33:06 6 MR. DOUGHTEN: Mr. Doughten for Mazloun.

12:33:10 7 MR. HARTMAN: Steve Hartman.

12:33:12 8 THE COURT: I have a question:

12:33:14 9 Count 2, Element 2. Is it sufficient for a  
12:33:22 10 defendant to conspire to provide material support, or  
12:33:28 11 must the material support be actually provided?

12:33:34 12 It is my understanding, subject to hearing  
12:33:36 13 from you folks, particularly the defense, that the  
12:33:40 14 conspiracy to provide material support suffices for  
12:33:44 15 conviction.

12:33:50 16 MR. HERDMAN: That's the government's  
12:33:50 17 understanding as well, Your Honor.

12:33:56 18 MR. DOUGHTEN: It's a pretty clear statement  
12:33:58 19 of law.

12:33:58 20 MR. HARTMAN: I think so. I think they  
12:33:58 21 just have to find the agreement.

12:34:02 22 THE COURT: Ms. Cleary, do you want some  
12:34:04 23 time to talk further? But I agree, it's quite  
12:34:08 24 straightforward.

12:34:10 25 MS. CLEARY: I think that's correct also.

12:34:16 1 MR. HARTMAN: Isn't it an element they have  
12:34:18 2 to find the agreement? Maybe what we should do is tell  
12:34:22 3 them it doesn't have to be provide; you just have to  
12:34:26 4 find agreement, rather than conspiracy, and use --

12:34:34 5 MR. SOFER: The conspiracy is an agreement.  
12:34:34 6 I think you're going to confuse them unless you answer  
12:34:38 7 that question directly. Their question is very direct  
12:34:42 8 and simple would be the government's position.

12:34:50 9 Your Honor, is there a transcript being  
12:34:52 10 made?

12:34:52 11 THE COURT: Of course. Tracy's here.

12:34:54 12 MR. SOFER: The government's position would  
12:34:56 13 be it's a simple question with a simple answer.

12:35:02 14 THE COURT: I'm typing.

12:35:04 15 MS. CLEARY: I think it's accurate to say  
12:35:06 16 that they only have to a have an agreement to provide  
12:35:10 17 material support.

12:35:20 18 THE COURT: I'm typing; hold on a moment.

12:35:30 19 MR. SOFER: The question is: Is it  
12:35:34 20 sufficient? They're not asking for other information.  
12:35:36 21 They're simply asking if it's sufficient.

12:35:40 22 MR. HARTMAN: But, Gregg, my only point is,  
12:35:42 23 and I'm not disagreeing with you. I'm not saying that  
12:35:46 24 your position is wrong. I'm just saying that it is  
12:35:48 25 sufficient that they conspire. Well, the conspiracy is

12:35:52 1 the charge, but the agreement is one element, and  
12:35:54 2 they're asking about the second element. That's the  
12:35:58 3 only reason why I suggested that.

12:36:00 4 MR. SOFER: I understand your point. I  
12:36:00 5 just think -- I think there's always a danger of  
12:36:04 6 confusing people if you don't answer the question  
12:36:06 7 directly. They've asked a direct question. They have  
12:36:10 8 been instructed on the law of conspiracy. The fact  
12:36:14 9 that they are talking about it in terms of elements  
12:36:16 10 means that they're actually going through the elements  
12:36:18 11 of the conspiracy charge. They've asked a very simple  
12:36:24 12 question, and so I think you're risking confusing them  
12:36:30 13 by throwing other terms in. You should just answer  
12:36:32 14 their question.

12:36:34 15 MR. HARTMAN: What I was saying, isn't that  
12:36:38 16 the second element in the charge that they got? I  
12:36:42 17 mean, you can say they don't have to provide anything;  
12:36:46 18 you just have to find the agreement.

12:36:50 19 MR. SOFER: We don't have it in front of us,  
12:36:52 20 but agreement is the first element. And again, I think  
12:36:58 21 rather than try to reparse out all the elements, what  
12:37:02 22 you want to do is answer the jury's legal question which  
12:37:06 23 has a clear, unambiguous, legal answer; which is, Yes.  
12:37:12 24 When they say: Is it sufficient? The answer is: Yes,  
12:37:14 25 that is sufficient.



12:37:16 1 THE COURT: Let me try the following, and I  
12:37:20 2 can e-mail this to you.

12:37:24 3 Ladies and gentlemen, in answer to your  
12:37:26 4 question: "Count 2, Element 2, is it sufficient for a  
12:37:34 5 defendant to conspire to provide material support, or  
12:37:40 6 must the material support be actually provided?"

12:37:46 7 The answer is: It is sufficient for  
12:37:50 8 conviction under that count for you to find that a  
12:37:56 9 defendant has conspired, as defined in the jury  
12:37:58 10 instructions, to provide material support.

12:38:04 11 MR. SOFER: That's fine with the government,  
12:38:06 12 Judge.

12:38:08 13 MR. DOUGHTEN: Yes, Your Honor.

12:38:10 14 MR. HARTMAN: Yes, that's fine. No  
12:38:12 15 objection to that.

12:38:14 16 THE COURT: I meant to add, to include  
12:38:18 17 "beyond a reasonable doubt." So let me read the  
12:38:20 18 proposed answer again: "It is sufficient for conviction  
12:38:26 19 under that count for you to find beyond a reasonable  
12:38:30 20 doubt that a defendant has conspired, as defined in the  
12:38:34 21 jury instructions, to provide material support."

12:38:42 22 MR. HARTMAN: No objection for El-Hindi.

12:38:44 23 MR. SOFER: I guess the government would  
12:38:46 24 just request that this be prefaced by the word, "yes,"  
12:38:52 25 so that they -- again, they get a simple answer to their

12:38:54 1 question. The further statement is then given. At  
12:39:00 2 least it puts it in the context of the simple answer to  
12:39:02 3 a simple question. We'd ask that the Court say: The  
12:39:08 4 answer to your question is, yes, and then give the rest  
12:39:10 5 of that instruction.

12:39:12 6 THE COURT: Okay. Yes, it is sufficient for  
12:39:14 7 conviction under that count for you to find beyond a  
12:39:20 8 reasonable doubt that a defendant has conspired as  
12:39:22 9 defined in the jury instructions to provide material  
12:39:26 10 support.

12:39:28 11 MR. SOFER: That's fine.

12:39:28 12 MR. HARTMAN: Yes, that's fine with us.

12:39:32 13 THE COURT: Okay. Let me take a roll.  
12:39:34 14 Mr. Sofer, is that acceptable?

12:39:36 15 MR. BAUER: Yes, it's fine with the  
12:39:40 16 government.

12:39:40 17 THE COURT: Mr. Hartman?

12:39:40 18 MR. HARTMAN: No objection from Mr.  
12:39:44 19 El-Hindi.

12:39:44 20 THE COURT: Mr. Doughten?

12:39:46 21 MR. DOUGHTEN: No objection.

12:39:46 22 THE COURT: Ms. Cleary?

12:39:48 23 MS. CLEARY: No objection, Your Honor.

12:39:48 24 THE COURT: I will have Amy take that on  
12:39:50 25 back.

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MR. SOFER: Thank you, Your Honor.

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15:39:24 1 (Telephone conference commenced at 3:39 p.m.  
15:39:26 2 on June 12, 2008.)

15:39:30 3 THE COURT: Who all is on the phone?

15:39:32 4 MR. SOFER: The government is here.

15:39:36 5 MS. CLEARY: The Amawi team.

15:39:36 6 THE COURT: For Amawi?

15:39:38 7 MS. CLEARY: We have Mr. Bryan, Mr. Ivey,  
15:39:42 8 and Amy Cleary.

15:39:44 9 MR. HARTMAN: For El-Hindi, Hartman and Alek  
15:39:50 10 El-Kamhawwy.

15:39:50 11 MR. HELMICK: For Mazloun you have Jeff  
15:39:52 12 Helmick and Dave Doughten.

15:39:54 13 THE COURT: Okay. The question is: Count  
15:39:58 14 3, if the defendant translates information from Arabic  
15:40:02 15 to English, is that a form of distribution?

15:40:06 16 My answer is -- and Amy tells me you agree;  
15:40:14 17 is that correct?

15:40:14 18 MS. CLEARY: We do, Your Honor.

15:40:16 19 THE COURT: Ms. Cleary, why don't you  
15:40:18 20 dictate, have the thrill of dictating something to a  
15:40:22 21 federal judge. We will then type it.

15:40:24 22 MR. SOFER: Let me just tell you what the  
15:40:26 23 government's position is just in case -- I think we may  
15:40:30 24 have a slight disagreement. We agree the Court should  
15:40:34 25 read again to the jury the definition as it was read the

15:40:38 1 first time through of distribution. I think that's  
15:40:40 2 certainly what we all agree on. The only thing the  
15:40:46 3 government suggests is that the statute itself that was  
15:40:54 4 also in the instructions along with it, because the two  
15:40:58 5 things are very much connected, and also, Your Honor, we  
15:41:04 6 would also at least remind the Court of your opinion on  
15:41:10 7 this matter in the sense the legal issue in part has  
15:41:16 8 already been litigated. So those are the three things  
15:41:18 9 we just wanted to get across.

15:41:24 10 THE COURT: Well, can somebody dictate  
15:41:26 11 something to me, though? I wasn't really being  
15:41:30 12 facetious.

15:41:30 13 MS. CLEARY: What we would propose is you  
15:41:34 14 simply restate what it states in the jury instructions.

15:41:36 15 THE COURT: What instruction number?

15:41:38 16 MS. CLEARY: Page 38 of the final  
15:41:40 17 instructions, part of Instruction Number 22 under the  
15:41:50 18 definition, Support, where it says: Distribute means to  
15:41:56 19 sell, issue, give, transfer or otherwise dispose of by  
15:42:02 20 any means.

15:42:04 21 MR. SOFER: Judge, the government is asking  
15:42:08 22 that you give the whole instruction.

15:42:10 23 THE COURT: The entire instruction?

15:42:14 24 MR. SOFER: Just the instruction on this  
15:42:16 25 charge.

15:42:16 1 THE COURT: That's what I meant.

15:42:18 2 MR. SOFER: The beginning part of it, yes.

15:42:20 3 We don't have it in front of us, but the part that talks  
15:42:24 4 about the actual statutory language.

15:42:30 5 MR. HARTMAN: On behalf of El-Hindi, I think  
15:42:32 6 we would object to that. They want to know if  
15:42:38 7 translating is distribution. They're asking a simple  
15:42:40 8 question: What is distribution? Give them the  
15:42:42 9 definition of distribution. I don't think we can tell  
15:42:46 10 them yes or no because that's an actual issue for them  
15:42:50 11 to determine after they consider what distribution  
15:42:54 12 means. I think that all they should be given is the  
15:42:58 13 definition of distribution.

15:43:02 14 MR. IVEY: This is Tim Ivey. On the  
15:43:04 15 previous question Mr. Sofer indicated that the jury  
15:43:08 16 asked a specific question, and we asked for additional  
15:43:12 17 things, and he said we should only answer the specific  
15:43:16 18 question. So this is a goose/gander situation. They  
15:43:18 19 asked about distribution. Give them distribution.  
15:43:20 20 Don't try to put in all this other stuff.

15:43:24 21 MR. SOFER: The thing about that, Judge, is  
15:43:28 22 there is a simple answer. Your Honor's opinion actually  
15:43:38 23 is, yes, it can. The simple answer then to the  
15:43:44 24 question, then again, I think the answer could be as  
15:43:46 25 simple as "Yes." We don't think that would be

15:43:50 1 appropriate here because this question's a little bit  
15:43:52 2 more complex. It's answering the question whether to  
15:43:56 3 translate -- Mr. Hartman said this before, and we would  
15:44:00 4 agree, that simply to translate something by itself  
15:44:02 5 without more, meaning at least there's another person  
15:44:06 6 there, would not be distributing. But that's why we  
15:44:10 7 think that the whole statute -- this has to be placed in  
15:44:14 8 the context of the entire statute, which talks about  
15:44:20 9 what distribution is under 842(p)(2)(A) because a part  
15:44:24 10 of that actual statute, it talks about demonstrating,  
15:44:32 11 direct, and it talks about in whole or in part. And  
15:44:34 12 that whole concept of "in whole or in part by any means"  
15:44:40 13 is related to the definition of distribution. In other  
15:44:44 14 words, the statute in part answers the question, and in  
15:44:48 15 part the definition of distribution answers this  
15:44:50 16 question. And I think if you try to separate them, it  
15:44:52 17 becomes, I think, harder to discern what the answer to  
15:44:56 18 the question is.

15:44:58 19               Instead, Your Honor, we would say another,  
15:45:02 20 possibly simpler, answer would be the answer could be:  
15:45:06 21 Yes, if the other elements and statutory language is  
15:45:12 22 satisfied. But we thought it would be better just to  
15:45:16 23 simply give them the charge again, which, of course,  
15:45:18 24 they've had already. I don't see how that prejudices  
15:45:22 25 anybody.

15:45:24 1 MR. IVEY: They had the previous question's  
15:45:26 2 instruction as to Your Honor. We would ask for  
15:45:28 3 specific things for additional clarification, and we  
15:45:30 4 were limited to the instruction. That's what we're  
15:45:34 5 asking for here. I understand why Mr. Sofer wants all  
15:45:36 6 that extra stuff, but it's the same reason we wanted  
15:45:40 7 extra stuff in the previous question. There's a  
15:45:42 8 specific question; the answer is the jury instruction.  
15:45:46 9 We would say just give them the jury instruction.

15:45:50 10 THE COURT: Excuse me. My answer -- I'm  
15:45:54 11 going give them following:

15:45:56 12 Ladies and gentlemen, you have asked, "Count  
15:46:00 13 3: If a defendant translates information from Arabic to  
15:46:10 14 English, is that a form of distribution?"

15:46:14 15 My answer is to remind you of the definition  
15:46:16 16 of "distribution" in instruction Number 22, page 38,  
15:46:22 17 which states: Quote, "Distribute" close quote, means to,  
15:46:28 18 quote, "sell, issue, give, transfer, or otherwise  
15:46:30 19 dispose of by any means."

15:46:44 20 And I'm just going to let it go at that  
15:46:46 21 because that is -- that's the only place I think they  
15:46:52 22 can properly look. They've asked what does distribute  
15:46:54 23 mean? Does a certain kind of conduct come within that  
15:47:00 24 meaning? And I'm very concerned that if I do anything  
15:47:02 25 else, it could be construed as directing them toward a



15:47:08 1 verdict in one way or another, and I don't want to do  
15:47:10 2 that. So hold on one minute.

15:47:20 3 MR. SOFER: Judge, would you be willing to  
15:47:22 4 just add or say "refer to the instruction which  
15:47:26 5 includes," and then quote the distribution language?

15:47:34 6 MR. HARTMAN: Judge, we would object to even  
15:47:36 7 that for the reasons you stated. I mean, they're  
15:47:38 8 asking -- like you said, it's very simple; they're  
15:47:42 9 asking what distribute means.

15:47:48 10 MR. SOFER: They're not asking so much what  
15:47:50 11 distribute means. They're asking in the context of  
15:47:54 12 Count 3, which is a particular statute, whether or not  
15:47:58 13 translating could be distributing under that statutory  
15:48:00 14 provision. That's why we think it's important to at  
15:48:06 15 least put it in its proper context.

15:48:08 16 THE COURT: They know they have to read all  
15:48:10 17 the instructions in context. I'm not going to repeat  
15:48:14 18 that. I'm going to simply say: My answer is to remind  
15:48:16 19 you of the definition of "distribution" in instruction  
15:48:20 20 Number 22, page 38, which states, "distribute" -- it  
15:48:34 21 does say distribute, not distribution -- means to "sell,  
15:48:40 22 issue, give, transfer, or otherwise dispose of," close  
15:48:42 23 quote, by any means. Okay.

15:48:48 24 MS. CLEARY: Thank you, Judge.

15:48:50 25 MR. HARTMAN: Thank you, Judge.

15:48:50 1 THE COURT: Thank you, folks.

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C E R T I F I C A T E

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7 I certify that the foregoing is a correct transcript  
8 from the record of proceedings in the above-entitled  
9 matter.

10

11 /s Tracy L. Spore\_\_\_\_\_

12 Tracy L. Spore, RMR, CRR

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Date

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